

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAMON MURILLO,
CDCR #P-43503,

Plaintiff,

IAN PARKINSON, et al.,

Defendants.

Civil No. 11-1687 BEN (BGS)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”) in

San Diego, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983.

Plaintiff claims San Luis Obispo County Sheriff’s Department and RJD officials beat him, denied him access to court and retaliated against him in various ways for exercising his right to petition for redress. (*See* Pl.’s Mem. in Supp. of Compl. [ECF No. 1] at 15-24.) However, Plaintiff has neither prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action, nor has he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

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I.

Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

9 Because Plaintiff has not prepaid the \$350 filing fee nor submitted a Motion to Proceed
10 IFP, this civil action cannot proceed. *Id.*; 28 U.S.C. § 1914(a).

III.

Conclusion and Order

13 || For the reasons set forth above, the Court hereby:

14 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
15 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

16 (2) **GRANTS** Plaintiff forty five (45) days leave from the date this Order is filed to:
17 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
18 IFP which includes a certified copy of his trust account statement for the 6-month period
19 preceding the filing of the Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

IT IS FURTHER ORDERED that the Clerk of the Court shall provide Plaintiff with this Court's approved form "Motion and Declaration in Support of Motion to Proceed In Forma Pauperis." If Plaintiff fails to prepay the \$350 civil filing fee or complete and submit the enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without prejudice and without further Order of the Court.

IT IS SO ORDERED.

26 || DATED: August 8, 2011

Hon. Roger T. Benitez
United States District Judge